IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 575 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

DN MODAN C/O.YUSUFBHAI MASTER

Appearance:

1. Special Civil Application No. 575 of 2002
MR ASIM J PANDYA for Petitioners No. 1-2
MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Upon the joint request and considering importance and the emergency in the matter, this matter is taken up for hearing today itself.

The petitioners have questioned legality and validity of the judgment and order dated 2-11-01 recorded by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in O.A. No. 416 of 1996, whereby the application of the respondent for quashing and setting aside the departmental proceeding on the same set of facts, evidence and evidence upon which the respondent came to be concluded, came to be allowed.

The few relevant skeleton projection of facts can be highlighted in the departmental inquiry, against the respondent on the ground of misconduct objection came to be raised about maintainability on the ground that the respondent came to be acquitted in criminal trial in Criminal Case No. 1 of 1992 by the Chief Judicial Magistrate, Vadodara. The acquittal was clean and clear on the merits. It was not obviously based on benefit of doubt or technical impediment. Since the inquiry proceedings were proceeding, the respondent filed an application before the Tribunal raising the same grounds.

The respondent was holding post of Assistant Engineer under the petitioners since 18-10-1991. He was put under suspension on the ground of investigation of criminal case with effect from 24-9-1993. The order of suspension was revoked. The respondent was chargesheeted in a criminal case. It was alleged that the respondent while serving in the Telephone Office during the period from 10-5-91 to 7-8-91, he was performing his duty as Assistant Engineer as the In-charge of the Store Room, he had disposed of the telephone material worth Rs.1,26,250/-. Four witnesses came to be examined in the trial including the complainant one Ramakant Radheshyam Sharma. The Criminal Court, upon analysis of evaluation of the evidence came to a positive conclusion that the respondent was innocent and there was no entrustment with the property of the respondent over the property in quota to which the accused respondent alleged to be used. The finding recorded by the trial Court has not been challenged further.

The respondent, therefore, raised issue regarding validity and continuance of the aforesaid departmental proceedings on the same set of facts, evidence and evidence. The allegations in the chargesheet and the allegations in the departmental inquiry are placed in the

affidavit-in-reply filed by the respondent before us. We have dispassionately examined the entire record emerging in the present petition and the contents and the tenore of the chargesheet in criminal trial and the allegations in the chargesheet in the departmental proceedings. Upon examination, analysis and evaluation of the relevant facts and circumstances and relevant proposition of law, the view taken by the Tribunal is quite justified, which requires no interference by this Court in exercise of extra ordinary, equitable, prerogative and constitutional powers under Article 226 of the Constitution of India. The proposition of law evidently and clearly propounded by the Apex Court in the case of Paul Anthony Vs. Bharat Gold Mines Ltd. and Anrs, reported in 1999 (3) SCC 679, is not attracted to the facts of the present case coupled with the provisions of Rule 82 of the P & T Vol. III, which is quoted in the impugned judgment of the Tribunal. The petition is, therefore, deserves to be rejected at the admission state. Accordingly, this petition is rejected. Rule is discharged, with no order as to costs.

Date:-18-2-2002. (J.N. Bhatt, J.)

(Akshay H. Mehta, J.)

/JVSatwara/